

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

BRITNEE KENYON,

Plaintiff,

v.

BOARD OF EDUCATION OF TOWNSHIP  
HIGH SCHOOL DISTRICT 113, DANIEL  
STRUCK, THOMAS KRIEGER, MICHELLE  
HAMMER BERNSTEIN,

Defendants,

and

J.L.,

Respondent in Discovery

Case No. 1:24-cv-09878

REMOVED FROM THE CIRCUIT COURT  
FOR THE NINETEENTH JUDICIAL  
CIRCUIT, LAKE COUNTY, ILLINOIS,  
Case No. 2024LA00000411

**NOTICE OF REMOVAL**

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1441(a) and 1446, Defendants the Board of Education of Township High School District 113 (the “Board”), Daniel Struck, and Thomas Krieger, by and through their undersigned counsel, hereby remove this action from the Circuit Court for the Nineteenth Judicial Circuit, Lake County, Illinois, to the United States District Court for the Northern District of Illinois. The grounds for removal are as follows:

1. On June 21, 2024, Plaintiff initiated this lawsuit alleging violations of her rights under the First Amendment of the United States Constitution and 42 U.S.C. § 1983 and additional claims arising under state law by filing a complaint against the Board, Struck, Krieger, and Michelle Bernstein in the Circuit Court for the Nineteenth Judicial Circuit, Lake County, Illinois, case number 2024LA00000441.

2. The original Complaint filed in Lake County Circuit Court included unredacted references to a current minor student of District 113 and named that student’s parent as a respondent in discovery. On September 24, 2024, Plaintiff filed a Motion to Seal the original complaint in Lake County Circuit Court and sought leave to substitute an Amended Complaint

from which the student identifying information had been redacted. On October 8, 2024, the Lake County Circuit Court impounded the original Complaint and granted Plaintiff leave to file an Amended Complaint with the name and identifying information of the student and parent / respondent in discovery redacted to preserve the student's privacy.

3. The Amended Complaint is attached to this Notice of Removal as **Exhibit A**. Defendants will separately file a motion for leave to file the original unredacted Complaint under seal.

4. Plaintiff served this action on the Board, Krieger, and Struck on September 18, 2024. Copies of all process, pleadings (other than the original Complaint, which will be submitted for filing under seal) served on the Board, Krieger, and Struck are attached as **Exhibit B**, and the returns of service filed in the Circuit Court of Lake County are attached as **Exhibit C**.<sup>1</sup>

5. This Notice of Removal is timely filed within thirty days of service of the initial pleading setting forth the claim for relief upon which the state court action is based. See 28 U.S.C. § 1446.

6. Pursuant to 28 U.S.C. § 1331, “[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”

7. The Court has original jurisdiction over Plaintiff's federal claim under 42 U.S.C. § 1983.

8. The Court also has supplemental jurisdiction over Plaintiff's state claims under 28 U.S.C. § 1367.

---

<sup>1</sup> References in these documents to the parent referred to in the Amended Complaint as J.L. are redacted from these documents to preserve the privacy of J.L.'s minor student. Defendants will seek leave to file unredacted versions of these documents under seal.

9. This action is removable under 28 U.S.C. § 1441(a), because the Complaint alleges claims that arise under a federal statute over which this Court has original jurisdiction under 28 U.S.C. § 1331 and claims over which the Court has supplemental jurisdiction under 28 U.S.C. § 1367.

10. Venue is proper in this Court pursuant to 28 U.S.C. §§ 93(a)(1), 1441(a), & 1446(a), because the Circuit Court of Lake County where the Lawsuit was originally filed and has been pending, is within this federal district and division, and the matters alleged in the Amended Complaint purportedly occurred within this district.

11. Under 28 U.S.C. § 1446(b)(2)(A), “all defendants who have been properly joined and served must join in or consent to the removal of the action.”

12. The Board, Krieger and Struck have joined in filing this Notice.

13. To Defendants’ knowledge, the remaining defendant, Bernstein, has not yet been served. Plaintiff’s counsel advised the Lake County Circuit Court in open court on October 8, 2024, that Bernstein has not yet been served, and no return of service has been filed for Bernstein as of the time of filing of this Notice of Removal.

14. J.L. is named only as a respondent in discovery. A person named only as a respondent in discovery is not considered to be a party to a lawsuit under Illinois law. *Allen v. Thorek Hosp.*, 275 Ill.App.3d 695, 703 (1st Dist. 1995). A person named as a respondent in discovery becomes a party defendant only if there is a timely motion to make the party a defendant. 735 ILCS 5/2-402; *Roe v. Little Co. of Mary Hosp.*, 815 F. Supp. 244, 246-248 (N.D. Ill. 1992). J.L. has not moved to be made a defendant in this case nor has Plaintiff named J.L. as a defendant. Accordingly, J.L. is not currently a party and J.L.’s joinder or consent is not required for removal under 28 U.S.C. § 1446.

15. A copy of this Notice of Removal is being filed in the Circuit Court of Cook Lake County on the same date of this Notice.

Dated: October 10, 2024

Respectfully submitted,

**THE BOARD OF EDUCATION OF  
TOWNSHIP HIGH SCHOOL DISTRICT  
113, DANIEL STRUCK, and THOMAS  
KRIEGER, Defendants.**

By: /s/ William R. Pokorny  
One of their attorneys

William R. Pokorny  
[wrp@franczek.com](mailto:wrp@franczek.com)  
FRANCZEK P.C.  
300 S. Wacker Dr., Suite 3400  
Chicago, IL 60606  
(312) 986-0300

**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that on October 10, 2024, he caused a copy of the foregoing **DEFENDANTS' NOTICE OF REMOVAL** to be e-filed using the CM/ECF e-filing system and served via U.S. Mail, proper postage prepaid, and electronic mail on all parties of record, namely:

Adam M. Berger  
Myles R. Carroll  
Miller Berger, LLC  
20 N. Clark Street, Suite 525  
Chicago, Illinois 60602  
[adam@millerberger.com](mailto:adam@millerberger.com)  
[myles@millerberger.com](mailto:myles@millerberger.com)

*/s/ William R. Pokorny*\_\_\_\_\_